

## Advancing Asset Recovery

Submission by the  
UNCAC Coalition's Asset Recovery Working Group<sup>1</sup>  
to the 9th Session of the UNCAC Conference of States Parties

There have been small advances in asset recovery in the past 18 years since the first UNCAC Conference of States Parties. However, only a fraction of the amount looted from developing countries, where the resources are badly needed, has been returned.

Apparent weaknesses in international frameworks and national systems should be addressed. In most of the countries where the stolen loot is deposited, there is insufficient political will to apply the necessary detection and confiscation measures for prompt asset recovery and return. In many of the countries from which the assets have been plundered, there is no effort to recover them. And when there is asset recovery and return, it is often not done in a transparent, accountable and inclusive manner.

A number of measures supplementing UNCAC provisions could help achieve faster and more accountable asset recovery processes. Some are covered by commitments in the June 2021 UNGASS Political Declaration<sup>2</sup> (in boxes below). **Both, origin and destination jurisdictions, should give the strongest and most effective possible interpretation to the UNGASS commitments and report on their progress.<sup>3</sup>**

### Beneficial ownership transparency

UNGASS political declaration para 16: "We commit to...taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries (...)"

<sup>1</sup> <https://uncaccoalition.org/get-involved/working-groups/asset-recovery/>.

<sup>2</sup> <https://undocs.org/A/RES/S-32/1>.

<sup>3</sup> See also the recommendations in the Civil Society Statement for the Global Forum on Asset Recovery in 2017, which is as relevant today as it was then, <https://uncaccoalition.org/civil-society-statement-for-the-global-forum-on-asset-recovery/>.

**Transparency of the beneficial ownership of legal structures** is key for successful asset recovery. Low transparency of beneficial ownership not only facilitates the laundering of proceeds of corruption but also hampers investigations and efforts to trace and freeze illicit assets. The best way to address this problem is **through centralised registries of beneficial ownership information that are freely accessible to the public**. These can save time for competent authorities and also allow for oversight by a range of experts and investigators.

In addition, **anti-money laundering requirements, including to identify the ultimate beneficiaries in business transactions, should be extended and robustly applied to all professionals and entities providing services that offer risks of money laundering**.<sup>4</sup> The requirements should **include imposition of sanctions for non-compliance and publication of detailed statistics on reporting and compliance**.

**Good practice example in the European Union:** The EU's 5th Anti-Money Laundering (AML) Directive requires all Member States to set up a centralised register of the ultimate, or so-called 'beneficial', owners of companies and make this information available to the public.

### **AML oversight and enforcement**

OP 19: "We will institute comprehensive domestic regulatory and supervisory regimes for banks and non-bank financial institutions (...) in order to deter and detect all forms of money-laundering (...). We will strengthen the capacity of financial intelligence units (...)."

Effective anti-money laundering efforts are a key conduit for detecting illicit financial flows. **Serious investment in regulatory authorities is needed in many countries** – the impact of such efforts would be particularly large in jurisdictions that are major destinations for proceeds of corruption. Furthermore, **sanctions applied for violating AML requirements should be expanded to ensure they have a deterrent effect**, in particular for large financial institutions and DNFBPs that facilitate illicit financial flows.

### **Data transparency**

Para 52: "We will consolidate and expand the global knowledge and data collection on asset recovery and return through gathering and sharing information on challenges and good practices, as well as on volumes of assets frozen, seized, confiscated and returned in relation to corruption offences, and the number and types of cases (...)"

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<sup>4</sup> Designated Non-Financial Businesses and Professions (DNFBPs), as defined by the Financial Action Task Force (FATF), include real estate agents, private equity and hedge fund managers, sellers of yachts, airplanes and other luxury goods, lawyers, accountants, company formation agents, and art dealers.

**Data on international asset recovery at all stages is crucial for assessing progress and informing effective strategies.** It should be disaggregated according to asset categories and end-use. Likewise, countries should share agreements for return of assets, challenges and good practices is important for advancing asset recovery, including with CSOs.

**Good practices in UK:** The UK has published extensive official statistics on asset recovery for mid-2015 through March 2021.<sup>5</sup> This includes the value and volume of proceeds of crime restrained, seized, and recovered through criminal confiscations, forfeitures and civil recovery, on the value of compensation paid to victims, and experimental statistics on international asset recovery. UK civil society has recommended disaggregating asset return data so that there can be annual reporting on assets returned that relate to corruption. The UK also publishes MOUs when assets are returned.<sup>6</sup>

### **Non-conviction-based confiscation**

Para 40: "We will adequately address requests based on non-criminal proceedings, including civil, administrative non-conviction-based proceedings, as well as those related to information concerning unexplained assets held by public officials (...)"

"47. We commit to using the available tools for asset recovery and asset return, in accordance with domestic law, such as conviction-based and non-conviction-based confiscation (...)"

**Non-conviction-based (NCB) confiscation or asset forfeiture is critical in asset recovery cases where a criminal conviction is impossible.** This includes cases where the offender is dead, has fled the jurisdiction, is immune from prosecution or too powerful to prosecute. In other cases, the origin jurisdiction is unable or unwilling to provide international cooperation to a criminal prosecution in a destination jurisdiction and can thereby stymie criminal pursuits. International cooperation in non-criminal proceedings is often essential for the success of non-conviction-based forfeiture and a speedy implementation of that commitment would also help to advance asset recovery efforts.

Where confiscation is only possible after a criminal conviction, **countries should introduce a presumption of money laundering where certain criteria are met, to facilitate conviction of the offenders and confiscation of the proceeds of crime.**

<sup>5</sup> <https://www.gov.uk/government/statistics/asset-recovery-statistical-bulletin-financial-years-ending-2016-to-2021>.

<sup>6</sup> <https://www.gov.uk/government/publications/return-of-funds-forfeited-by-the-national-crime-agency-luca-filat-agreement-between-uk-and-moldova/mou-between-uk-and-moldova-on-the-return-of-funds-forfeited-by-the-national-crime-agency-in-relation-to-luca-fila>.

**Good MLA practice in Switzerland:** In principle, MLA in Switzerland may only be granted in “criminal matters”, but in practice it can be granted for non-criminal procedures since the definition of criminal matter is very broad and encompasses civil and NCB typologies.

**Good practice presumption in France:** Assets are presumed to be the direct or indirect proceeds of an offense if the conditions of the investment have no other justification than to conceal the origin or beneficial owner of the asset.<sup>7</sup> The burden of proof is reversed, which has enabled conviction and recovery of assets in some of the French “Biens Mal Acquis” cases.

Para 50: "When employing alternative legal mechanisms and non-trial resolutions, including settlements, in corruption proceedings that have proceeds of crime for confiscation and return, we will strengthen our efforts to confiscate and return such assets in accordance with the Convention."

There is too little confiscation and return of the proceeds of corruption in the context of non-trial resolutions in foreign bribery proceedings. **Minimum standards should be developed for the use of settlements in proceeds of crime cases and should include transparency, judicial oversight and the opportunity for community stakeholders to participate.**<sup>8</sup>

#### **Transparent and accountable asset return**

Para 48: "[W]e...strive to ensure that [the return and disposal of confiscated property] is done in a transparent and accountable manner."

The UNCAC Article 9 obligations to promote transparency and accountability in the management of public finances should also be applied to the entire asset recovery process. For example, both origin and destination states should publish details on procured services and all direct and indirect costs linked to asset recovery and repatriation processes. The accountability commitment should include consultations with a broad range of stakeholders prior to return, and public reporting about the use of returned funds.

<sup>7</sup> French Penal Code, Article 324-1-1,  
[https://www.legislationonline.org/download/id/8546/file/France\\_CC\\_am012020\\_fr.pdf](https://www.legislationonline.org/download/id/8546/file/France_CC_am012020_fr.pdf).

<sup>8</sup> They should also not be used to deny requests for assistance from other affected jurisdictions.

Other guidance is provided by the GFAR Principles<sup>9</sup>, the Oslo Statement on Corruption involving Vast Quantities of Assets<sup>10</sup>, the UN OHCHR draft guidelines on a human rights framework for asset recovery<sup>11</sup> and principles and indicators proposed by civil society organisations.<sup>12</sup>

**Good practice example in Nigeria:** Nigerian civil society monitored the use of US\$322.5 million Abacha II loot returned from Switzerland for social welfare programmes as well as US\$311.79 million returned from the US and Jersey. Participation of civil society from the point of negotiation helped to embed transparency and accountability in the process. It enabled civil society to independently monitor the disbursement of the funds to poor Nigerians.

**Practice of concern:** In some countries, no final accounting is provided for the disposition of returned assets, including for all associated costs. In one country, significant costs were incurred for hiring expensive lawyers and advisers, but no information was published about those expenditures.

<sup>9</sup> <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>.

<sup>10</sup> Recommendation 64 of the Oslo Statement on Corruption involving Vast Quantities of Assets, recovered assets “should benefit, to the extent possible, the victims, the society and local communities that have been harmed by the corruption in accordance with principles of domestic law. Experts, civil society and grassroots organizations and the private sector should be invited to significantly participate in the decision-making process over the managing and disposition of parts of returned assets for compensation of social damage, in line with national legislation”,

[https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo\\_Outcome\\_Statement\\_on\\_Corruption\\_involving\\_Vast\\_Quantities\\_of\\_Assets - FINAL VERSION.pdf](https://www.unodc.org/documents/corruption/meetings/OsloEGM2019/Oslo_Outcome_Statement_on_Corruption_involving_Vast_Quantities_of_Assets - FINAL VERSION.pdf).

<sup>11</sup> [https://www.ohchr.org/Documents/Issues/Development/CFI-Frameworkforassetrecovery/Draft\\_OHCHR\\_Guidelines\\_HR\\_Asset\\_Recovery.pdf](https://www.ohchr.org/Documents/Issues/Development/CFI-Frameworkforassetrecovery/Draft_OHCHR_Guidelines_HR_Asset_Recovery.pdf).

<sup>12</sup> See e.g. <https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UNGASS - Submission of ANEEJ CiFAR CISLAC HRW I Watch ISCI TI EU TI France.pdf>.